



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,644	07/28/2003	Gregory A. Ehlers	68,180-005	4901

26753 7590 04/27/2007  
ANDRUS, SCEALES, STARKE & SAWALL, LLP  
100 EAST WISCONSIN AVENUE, SUITE 1100  
MILWAUKEE, WI 53202

EXAMINER
----------

BORISSOV, IGOR N

ART UNIT	PAPER NUMBER
----------	--------------

3628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/628,644	<b>Applicant(s)</b> EHLERS ET AL.	
	<b>Examiner</b> Igor N. Borissov	<b>Art Unit</b> 3628	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-30 and 33-61 is/are pending in the application.
- 4a) Of the above claim(s) 4-7 and 36-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 8-30, 33-35, 40-61 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Response to Amendment*

Amendment received on 2/05/2007 is acknowledged and entered. Claims 31, 32, 62 and 63 have been canceled. Claims 4-7 and 36-39 have been withdrawn. Claims 1, 2, 11-13, 23, 25-27, 30, 33-35, 42-44, 54, 56-58, and 61 have been amended. Claims 1-3, 8-30, 33-35 and 40-61 are currently treated on the merits.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1-3, 8-30, 33-35 and 41-61 are rejected under 35 U.S.C. 102(b) as being anticipated by Ehlers et al. (US 5,572,438).**

Claims 1 and 33. Ehlers et al. (Ehlers) teaches a method and apparatus for providing at least one energy management program to a customer of a utility of a commodity, the program aimed at managing demand for the commodity, the utility delivering the commodity to at least one customer site, the customer site having a plurality of devices which use the commodity, including the steps of:

defining the program having a subset of the plurality of devices at the customer site for which usage of the commodity may be managed by the utility by activating the program (C. 3, L. 35-47; C. 5, L. 45-55; C. 9, L. 9-10, 51-53);

allowing the customer to selectively subscribe to the program (C. 5, L. 52-55; C. 32, L. 57 – C. 33, L. 3);

delivering the commodity to the subset of devices (C. 3, L. 57-65);

measuring the instantaneous rate at which the commodity is being delivered to the subset of the devices (C. 15, L. 5-8);

sending the instantaneous rate of commodity consumption for each device within the subset to the utility in real time (C. 15, L. 5-8).

Claims 2 and 34. Said method, including the steps of:  
activating the program (C. 32, L. 57 – C. 33, L. 3);  
measuring at least one of a rate and a change in a rate at which the commodity is being delivered to the subset of the devices after activation of the program (C. 15, L. 5-8).

Claims 3 and 35. Said method, including the step of:  
determining an actual change in a rate of consumption of the commodity after activation of the program and recording the rate of change in a memory (C. 15, L. 5-8).

Claim 8. Said method, including the step of: providing a user interface for interaction with the customer (C. 9, L. 47 – C. 10, L. 8).

Claims 10 and 41. Said method, wherein each device has an associated node, and the method includes the step of allowing the customer to control one or more of the devices through the associated node (C. 10, L. 28-31).

Claims 11 and 42. Said method, wherein the utility delivers the commodity to a plurality of customer sites, each customer site having a plurality of devices and the step of defining the program includes the step of including within the program all devices of a similar type at each customer site (C. 12, L. 2-61).

Claims 12 and 43. Said method, wherein the utility delivers the commodity to a plurality of customer sites, each customer site having a plurality of devices and the step of defining at least one program includes the step of defining a plurality of programs, each program having a respective subset of the devices (C. 12, L. 2-61).

Art Unit: 3628

Claims 13 and 44. Said method, including the step of: activating the program; and,

allowing the customer to cancel the program when activated (C. 32, L. 57 – C. 33, L. 3).

Claims 14-17 and 45-48. Said method, including the step of: setting a budget goal; and, monitoring an aspect of usage of the commodity related to the budget goal (C. 14, L. 60 – C. 15, L. 49).

Claims 18, 19, 49 and 50. See reasoning applied to claims 1 and 30.

Claims 20-22 and 51-53. Said method, wherein the commodity is electrical power, water and gas.

Claims 23-30 and 54-61. See reasoning applied to claims 1 and 30.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 9 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ehlers et al. in view of Official Notice.**

Claims 9 and 40. Ehlers teaches all the limitations of claims 9 and 40, including that said second microcomputer, which is installed at the customer premises, is provided with an appropriate network/bus interface (C. 9, L. 56-57), except specifically teaching that said interface includes a web browser. Official notice is taken that it is old

and well known to use a browser to access the Internet, which is largest existing network. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Ehlers to include that said interface includes a web browser, because it would advantageously allow to save funds by employing the existing network rather than build a dedicated network.

### ***Response to Arguments***

Applicant's arguments filed 2/05/2007 have been fully considered but they are not persuasive.

In response to applicant's argument that the prior art fails to disclose defining an energy management program for use at the customer site where the energy management program has a subset of the plurality of devices at the customer site for which usage of the commodity may be managed by the utility by activating the energy management program, it is noted that Ehlers explicitly teaches said feature. Specifically, Ehlers teaches providing an automation system for monitoring energy consumed by a utility customer, and which permits to control operation of customer's loads by programming loads to function or not function in response to energy rate information supplied by the power company and parameters supplied by the customer (C. 3, L. 35-47; L. C. 5, L. 45-55; C. 9, L. 9-10, 51-53).

In response to applicant's argument that the prior art fails to disclose allowing a customer to selectively subscribe to an energy management program, it is noted that Ehlers teaches that the utility company can also access selected utilization data and can also control at least some of the customer's loads via messages to the first microcomputer *when the customer subscribes to or authorizes the utility company to perform such services* (C. 5, L. 55-55; C. 32, L. 57 – C. 33, L. 3);

In response to applicant's argument that the prior art fails to disclose sending instantaneous consumption rate for each device within the subset to the utility in real time, it is noted that Ehlers explicitly teaches communicating energy rate broadcasts, load shedding requests, customer usage reports and selected other data, wherein said communication is conducted in real-time (C. 15, L. 5-8).

In response to applicant's argument that the prior art fails to disclose that the energy management program can be activated and at least one of a rate and a change in a rate at which the commodity is being delivered to the subset of devices is measured after the activation of the energy management program, it is noted that Ehlers explicitly teaches that the customer selectively subscribes (activates) to an energy management program (C. 5, L. 52-55; C. 32, L. 57 – C. 33, L. 3), wherein measuring at least one of a rate and a change in a rate at which the commodity is being delivered to the subset of the devices after activation of the program is conducted (C. 15, L. 5-8).

In response to applicant's argument that the prior art fails to disclose activating the energy management program and, once the energy management program has been activated, allowing the customer to selectively cancel the energy management program, it is noted that Ehlers explicitly teaches that the customer selectively subscribes (activates) to an energy management program (C. 5, L. 52-55; C. 32, L. 57 – C. 33, L. 3), thereby indicating intermittent character of the program.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not

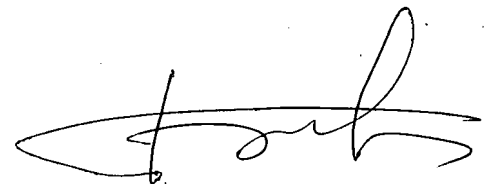
Art Unit: 3628

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Igor Borissov whose telephone number is 571-272-6801. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IB  
4/23/2007

A handwritten signature in black ink, appearing to read 'Igor N. Borissov', with a stylized, elongated horizontal stroke at the end.

IGOR N. BORISSOV  
PRIMARY EXAMINER